

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff(s),

No. CR 11-0083 PJH

v.

**ORDER**

FEI QIANG QIN,

Defendant(s).

The court enters this order so that the parties may prepare their closing arguments over the weekend with a clear understanding of what the jury instruction on deliberate ignorance will be. At today's hearing the discussion centered primarily on whether such an instruction was warranted given the evidence at trial. Defense counsel did, however, raise an objection to the language contained in the instruction proposed by the government based upon Ninth Circuit Model Instruction 5.7. Having had a further opportunity to review the instructions, the court agrees with defendant that the government has improperly crafted the first element of the instruction. Based upon the court's determination that a rational jury could find that defendant was aware of a high probability that some of the Dolby marks found on DVDs in his store were counterfeit, the court intends on giving an instruction along these lines:

"You may find that the defendant knowingly used a counterfeit mark, specifically the 'Dolby Digital' mark, on or in connection with DVDs if you find beyond a reasonable doubt that the defendant:

1. was aware of a high probability that some of the Dolby marks on DVDs in his store were counterfeit; and

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2. deliberately avoided learning the truth.

You may not find such knowledge, however, if you find that defendant was simply careless.”

Defendant may still proffer his own instruction along these lines if he chooses.

**IT IS SO ORDERED.**

Dated: January 27, 2012



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PHYLLIS J. HAMILTON  
United States District Judge